

TERMS AND CONDITIONS OF SALE OF NEWSON GALE LIMITED

1. INTERPRETATION

In these conditions the following words have the following meaning: **the Buyer** means the person(s), firm or company who purchases the Goods from Newson Gale; **Newson Gale** means Newson Gale Limited, a company incorporated in England and Wales whose registered office is Regent House, Clinton Avenue, Nottingham, NG5 1AZ (Company no: 2281932); **Contract** means any contract between Newson Gale and the Buyer for the sale and purchase of the Goods, incorporating these Conditions; **Delivery Point** means the place where delivery of the Goods is to take place under condition 4.1; and **Goods** means any goods agreed in the Contract to be supplied or actually supplied to the Buyer by Newson Gale (including any part or parts thereof); references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, replaced or interpreted; references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires; headings will not affect the construction of these conditions; any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. APPLICATION OF TERMS

- 2.1 These conditions shall apply to and be incorporated into all quotations, offers, orders, acceptances and Contracts for the sale of any Goods by Newson Gale and shall prevail over any other term of the Contract unless otherwise agreed by Newson Gale in writing. All terms and conditions of the Buyer are excluded.
- 2.2 No order placed by the Buyer shall be deemed to be accepted by Newson Gale until a written (which for the purposes of this condition 2 only includes email) acknowledgement of order is issued by Newson Gale or (if earlier) Newson Gale delivers the Goods to the Buyer at which point the Contract shall come into existence.
- 2.3 Any quotation is given on the basis that no contract will come into existence until Newson Gale issues an acknowledgement of order to the Buyer. Any quotation is (without prejudice to condition 2.1), valid for a period of 30 days only from its date, provided that Newson Gale has not previously withdrawn it.
- 2.4 The Contract constitutes the entire agreement between Newson Gale and the Buyer in relation to its subject matter. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Newson Gale which is not set out in the Contract.

3. DESCRIPTION

- 3.1 The description and any specification of the Goods shall be as set out in Newson Gale's quotation and Newson Gale's then current published technical specification sheets available at www.newson-gale.com (the "Website"). Newson Gale shall endeavour to keep its hard copy published technical specification sheets and published catalogues up-to-date but Newson Gale shall have no liability for any failure of Goods to conform to any specification other than that available on the Website at the time at which the Buyer's order is accepted in accordance with condition 2.2.
- 3.2 Save as provided in condition 3.1 above, all drawings, descriptive matter, samples, specifications and advertising issued by Newson Gale and any descriptions or illustrations contained in Newson Gale's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of the Contract.
- 3.3 Newson Gale reserves the right to amend, on notice in writing to Newson Gale, the description of the Goods if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 All Goods shall be supplied by Newson Gale on an ex-works basis and unless otherwise agreed in writing by Newson Gale, delivery of the Goods shall be completed on the Goods being made available at Newson Gale's place of business as notified to the Buyer from time to time or, where Newson Gale undertakes to deliver the Goods to the Buyer, on the arrival of the Goods at the delivery location set out in Newson Gale's acknowledgement of order (in each case, the "Delivery Point").
- 4.2 Unless otherwise agreed in writing, Newson Gale shall at the cost of the Buyer, arrange onward carriage of the Goods to the delivery location set out in Newson Gale's quotation. Where the Buyer and Newson Gale agree that the Buyer will collect the Goods from the Delivery Point, the Buyer will collect the Goods within 10 business days of being notified that the Goods are ready for collection.
- 4.3 Any dates specified by Newson Gale for the Goods being made available at the Delivery Point are an estimate only and time for delivery shall not be or made to be of the essence by notice. If no dates are specified, delivery will be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions Newson Gale will not be liable for any direct, indirect or consequential loss (all three of which terms include loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by Newson Gale's negligence).
- 4.5 If for any reason the Buyer will not take delivery of, or arrange the collection of within the period specified in condition 4.2 above (as the case may be) any of the Goods:
 - (a) risk in the Goods will pass to the Buyer (including for loss or damage caused by Newson Gale's negligence);
 - (b) the Goods will be deemed to have been delivered; and
 - (c) Newson Gale may store the Goods until delivery takes place whereupon the Buyer will be liable for all related costs and expenses (including storage and insurance).
- 4.6 If 10 business days after the day on which the Buyer failed to take delivery of, or arrange the collection of within the period specified in condition 4.2 above (as the case may be) any Goods the Buyer has not taken delivery of them, Newson Gale may at its option resell or otherwise dispose of part or all of the Goods.

- 4.7 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading and off-loading the Goods.
- 4.8 Newson Gale may deliver or make available the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

5. NON-DELIVERY AND RETURNS

- 5.1 The quantity of any consignment of Goods as recorded by Newson Gale upon despatch from the Delivery Point shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Buyer shall notify Newson Gale of any non-delivery of Goods within 10 days of the date of Newson Gale's tax invoice (but not for the avoidance of doubt any Newson Gale proforma invoice). Any liability of Newson Gale for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against the price for such Goods. Newson Gale shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event of force majeure as set out in condition 11 below or the Buyer's failure to provide Newson Gale with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.3 Any Goods returned to Newson Gale for whatever reason must be covered by a Goods Returned Authorization (GRA) Number. Goods returned without an accompanying GRA Number may be rejected. A GRA Number can be obtained by contacting Newson Gale and providing information about the reasons for the return.
- 5.4 In the case of Goods returned to Newson Gale for any reason other than any quality defect which is the subject of a successful warranty claim in accordance with condition 9 below, a 20% restocking charge based on the original net invoice price of the Goods concerned will apply and in the event that the Goods, once returned to Newson Gale have, in Newson Gale's sole opinion, been altered or damaged in any way, Newson Gale's costs of bringing such Goods back to a saleable condition or, at Newson Gale's sole option, of replacing such Goods shall also be charged to the Buyer.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery to the Delivery Point.
- 6.2 Ownership of the Goods shall not pass to the Buyer until Newson Gale has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - (a) hold the Goods on a fiduciary basis as Newson Gale's bailee;
 - (b) store the Goods (at no cost to Newson Gale) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Newson Gale's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition.
- 6.4 The Buyer may resell the Goods before ownership has passed to him/it solely on the following conditions:
 - (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of Newson Gale's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 Newson Gale shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Newson Gale.
- 6.6 If before title to the Goods passes to the Buyer, the Buyer encumbers or in any way charges any of the Goods or the Buyer becomes subject to any of the events listed in condition 8.2 below, or Newson Gale reasonably believes that any such event is about to happen and notifies the Buyer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Newson Gale may have, the Buyer's right to possession of the Goods shall terminate immediately and Newson Gale may at any time require the Buyer to deliver up the Goods and, if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them

7. PRICE AND PAYMENT

- 7.1 Unless otherwise agreed by Newson Gale in writing the price for the Goods shall be the price set out in the Contract.
- 7.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to carriage and insurance (if carriage required) all of which amounts the Buyer will pay in addition when it is due to pay for the Goods. Where the value of any Goods ordered is less than Newson Gale's minimum order value from time to time, Newson Gale may charge a small order price, such small order price shall be set out in Newson Gale's acknowledgment of order.
- 7.3 Payment of the price and all other costs or charges for the Goods is due prior to delivery unless agreed otherwise in writing. Time for payment shall be of the essence.
- 7.4 No payment shall be deemed to have been received until Newson Gale has received cleared funds. Payment shall be in the currency stated on the order acknowledgment form and shall be made by such method as is determined by Newson Gale.
- 7.5 All payments payable to Newson Gale under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 7.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by Newson Gale to the Buyer. Newson Gale may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Newson Gale to the Buyer.
- 7.7 If the Buyer fails to pay Newson Gale any sum due pursuant to the Contract the Buyer will be liable to pay interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

8. BUYER'S INSOLVENCY OR INCAPACITY

- 8.1 If the Buyer becomes subject to any of the events listed in condition 8.2, or Newson Gale reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to Newson Gale, Newson Gale may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and Newson Gale without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.
- 8.2 For the purposes of condition 8.1, the relevant events are:
- (a) the Buyer's inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
 - (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
 - (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
 - (g) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
 - (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 8.2 (a) to condition 8.2 (h) (inclusive);
 - (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
 - (k) the Buyer's financial position deteriorates to such an extent that in Newson Gale's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. QUALITY

- 9.1 Subject to condition 9.7 below, Newson Gale warrants that (subject to the other provisions of these conditions) upon delivery, and for a period of 12 months from the date of delivery or such other period stated otherwise by Newson Gale in writing, the Goods will:
- (a) conform in material respects to their description;
 - (b) be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
 - (c) be reasonably fit for the purpose for which the Goods of that type were made.
- For the avoidance of doubt, Newson Gale does not give any technical advice or warrant any advice relating to the suitability of any Goods.
- 9.2 Newson Gale shall not be liable for a breach of any of the warranties in condition 9.1 unless:
- (a) the Buyer gives written notice of the defect to Newson Gale, and (if the defect is as a result of damage in transit) to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) Newson Gale is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by Newson Gale) returns such Goods to Newson Gale's place of business at Newson Gale's cost for the examination to take place there.
- 9.3 Newson Gale shall not be liable for a breach of any of the warranties in condition 9.1 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
 - (b) the defect arises because the Buyer failed to follow good trade practice and (where in place) the instructions of Newson Gale as to the storage, installation, commissioning, use or maintenance of the Goods;
 - (c) the Buyer alters or repairs such Goods without the written consent of Newson Gale;
 - (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 9.4 Subject to conditions 9.2 and 9.3, if any of the Goods do not conform with any of the warranties in condition 9.1 Newson Gale shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if Newson Gale so requests, the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to Newson Gale.
- 9.5 If Newson Gale complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.1 in respect of such Goods.

- 9.6 Any Goods replaced will belong to Newson Gale and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the warranty period.
- 9.7 Insofar as the Goods comprises or contains equipment or components which were not manufactured or produced by Newson Gale, the Buyer shall be entitled only to such warranty or other benefit as Newson Gale has received from the relevant manufacturer.

10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 9.4, the following provisions set out the entire liability of Newson Gale whether in contract, tort (including negligence), breach of statutory duty, or otherwise, (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract. No warranties or conditions are given in relation to any opinion or advice given by Newson Gale. The Buyer must satisfy itself as to the suitability of the Goods for any particular purpose.
- 10.3 Nothing in these conditions excludes or limits the liability of Newson Gale for death or personal injury caused by Newson Gale's negligence, fraud or fraudulent misrepresentation.
- 10.4 Subject to conditions 10.2 and 10.3:
- (a) Newson Gale's total liability whether in contract, tort (including negligence), breach of statutory duty misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the price paid for the Goods under the Contract; and
 - (b) Newson Gale shall not be liable to the Buyer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), costs, expenses, depletion of goodwill or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract..

11. FORCE MAJEURE

Newson Gale reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Newson Gale including acts of God, interference by civil or military authorities, war or national emergency, armed conflict, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, collapse of building structure, storm, earthquake, loss at sea, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), failure of energy sources or transport network, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, or similar events, natural disasters or extreme adverse weather conditions, default of suppliers or subcontractors or inability or delay in obtaining supplies of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to Newson Gale to terminate the Contract.

12. GENERAL

- 12.1 Each right or remedy of Newson Gale under the Contract is without prejudice to any other right or remedy of Newson Gale whether under the Contract or not.
- 12.2 Failure or delay by Newson Gale in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by Newson Gale of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 12.3 Newson Gale may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Newson Gale.
- 12.4 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.5 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.